

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Guiness Communications Inc. d/b/a Delta
Cable Vision Request for Waiver of
47 C.F.R. § 76.1204(a)(1)

CSR-

To: Chief, Media Bureau

REQUEST FOR WAIVER

Pursuant to Section 706 of the Telecommunications Act of 1996 and Sections 1.3 and 76.7 of the Commission's rules, Guinness Communications Inc. d/b/a Delta Cable Vision ("Delta Cable") respectfully requests the same conditional relief from the integration ban¹ that the Commission previously granted to BendBroadband in January 2007 for the Motorola DCT-700 set-top box.² In accordance with the *BendBroadband Order*, Delta Cable has supplied an affidavit committing to move to an all-digital network by February 17, 2009 if this waiver is granted.

Delta Cable is a subsidiary of Delta Cable Communications Ltd., a Canadian cable operator providing cable television and broadband services in Delta, British Columbia, a southern suburb of Vancouver. As a natural extension of that business, Delta Cable provides service to approximately 750 U.S. consumers who live in Point Roberts, Washington. Home to 1300 people, Point Roberts is part of the United States

¹ 47 C.F.R. § 76.1204(a)(1) (second sentence).

² *Bend Cable Communications, LLC d/b/a BendBroadband Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, CSR-7057-Z, Memorandum Opinion and Order, DA 07-47 (rel. Jan. 10, 2007) ("*BendBroadband Order*"). The technical specifications for the Motorola DCT-700 are attached hereto as Exhibit 1.

essentially by historical accident, by virtue of the 1846 treaty that established the 49th parallel as the mainland northwestern border between the United States and Canada. Point Roberts is not connected to the continental United States, but is instead a five-square mile area of land at the southern tip of the Tsawwassen Peninsula of British Columbia, Canada. It is surrounded by water on three sides and Canada on the other, so is only reachable by land from Canada.

As demonstrated below, grant of the requested waiver is warranted by Delta Cable's commitment to transition to an all-digital network prior to the termination of analog broadcasting in the United States on February 17, 2009, and by the unique characteristics of the Point Roberts market.

I. GRANT OF THE REQUESTED WAIVER WOULD ENABLE DELTA CABLE TO COMMIT TO DEPLOY AN ALL-DIGITAL VIDEO SERVICE BY FEBRUARY 17, 2009.

In the *BendBroadband Order*, the Commission found that the public interest would be served by grant of a waiver for the low-cost DCT-700 set-top box if used by an operator to have in place an all-digital network before the February 17, 2009 DTV transition. The Commission found that an all-digital network would:

enable it to ensure that its cable subscribers will be able to view digital broadcast signals after the end of the DTV transition. It also may enable BendBroadband to provide additional HD content, which may facilitate the DTV transition by creating greater incentives for its subscribers to acquire digital television sets. Therefore ... a conditioned grant of the Waiver Request would facilitate BendBroadband's rapid transition to an all-digital network (*i.e.*, by 2008), which was a critical factor in the Commission's decision to consider waiver requests at all. ... [In addition, an all-digital network] would allow it to reclaim a considerable amount of spectrum within a clearly defined timeframe, which would enable it to provide consumers with advanced telecommunication capabilities, thereby

furthering the goals of Section 706.³

In the attached declaration, Delta Cable commits that if granted a waiver for the DCT-700, it will convert to an all-digital network prior to February 17, 2009. Delta Cable would reclaim the spectrum now used for analog channels to offer increased high-definition and video-on-demand programming, higher Internet access speeds, competitive telephone services, and other advanced telecommunications capabilities.⁴ In addition, the transition would help residents of Point Roberts successfully navigate the DTV transition in February 2009.

Grant of the requested waiver is critical to Delta Cable's ability to complete its transition to all-digital by February 2009. Before Delta Cable can eliminate analog video programming, it must assure that each of its customers has a digital set-top box for every analog television in their home. Economically, this can only be accomplished in the near-term if Delta Cable continues to be allowed to deploy a low-cost set-top box, such as the integrated Motorola DCT-700. The DCT-700 is the least expensive set-top box available today, at \$79. By contrast, Motorola's least expensive CableCARD-equipped device will cost nearly three times as much, approximately \$230.⁵ No other consumer

³ *BendBroadband Order* at ¶¶ 24-25. Similarly, in March 2005, the Commission recognized that a low-cost waiver would be vital consumers and the digital transition if it were necessary to preserve a low-cost set-top box option: "achieving consumer choice by establishing a competitive market should not displace a low-cost set-top box option for MVPD subscribers. It is critical to the DTV transition that consumers have access to inexpensive digital set-top boxes that will permit the viewing of digital programming on analog television sets both during and after the transition. The availability of low-cost boxes will further the cable industry's migration to all-digital networks, thereby freeing up spectrum and increasing service offerings such as high-definition television. Accordingly, as cable systems migrate to all-digital networks, we will also consider whether low-cost, limited capability boxes should be subject to the integration ban or whether cable operators should be permitted to offer such low-cost, limited capability boxes on an integrated basis." *Commercial Availability of Navigation Devices*, CS Docket 97-80, Second R&O, ¶ 37 (2005).

⁴ See Sworn Declaration of Larry Boulé attached hereto. This declaration is intended to provide the information requested by the Commission in ¶ 27 of the *BendBroadband Order*.

⁵ *BendBroadband Order* at ¶ 22; see also CS Docket No. 97-80, Letter from Jean Kiddoo, Counsel to RCN, to Marlene Dortch, FCC, at 2, fn. 1 (Nov. 21, 2006) (indicating the total cost of a DCH-100 plus CableCARD to be \$232 per box).

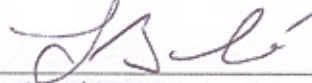
electronics manufacturer has committed to make CableCARD-equipped set-top boxes at a price anywhere near the price of the DCT-700. Because a transition to all-digital requires a significant number of new set-top boxes, this enormous cost increase would prevent Delta Cable from being able to migrate to all digital prior to the 2009 DTV transition.

The Commission is obliged to grant waivers where the application of a general rule to a specific situation would not serve the public interest underlying the rule, such as where the public interest benefits of a waiver exceed its costs.⁶ The public interest benefits of Delta Cable's migration to an all-digital network would be as significant as those deemed compelling by the Commission in the *BendBroadband Order*. Meanwhile, grant of the requested waiver will not have any significant adverse impact on the U.S. navigation device market. There are no electronics stores in Point Roberts, so many of its residents purchase their televisions and other electronics equipment in Canada rather than driving more than 40 kilometers around Boundary Bay and back across the U.S. border. Because CableCARD devices are typically not sold in Canadian stores, Delta Cable has not received any requests from customers for CableCARDs. There is no compelling evidence that application of the integration ban to Delta Cable's low-cost set-top boxes will change that fact; but on the other side of the scale, the record is clear that depriving Delta Cable of the ability to deploy DCT-700s would hurt consumers by raising their prices and delaying Delta Cable's transition to all-digital until after the termination of analog broadcasting.

⁶ 47 C.F.R. § 76.7(i) ("The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request . . ."); *see also id.* § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."); *KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1191-1192, 1195 (D.C. Cir. 1983) (vacating FCC denial of waiver request, holding that once the premise of the rule had been shown not to apply, the "logic of applying [the rule] collapses," and it was arbitrary to apply the rule); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) ("[A] general rule, deemed valid because the overall objectives are in the public interest, may not be in the 'public interest' if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest."); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Therefore, the Commission should grant Delta Cable's request for a waiver from the integration ban for the low-cost DCT-700 set-top box.

Respectfully submitted,



Larry Boulé
General Manager
Delta Cable Communications Ltd.
5381 48th Ave.
Delta, BC V4K 1W7

April 26, 2007

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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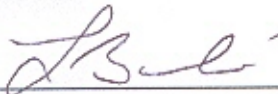
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SWORN DECLARATION OF LARRY BOULÉ

1. My name is Larry Boulé. I am the General Manager of Delta Cable Communications Ltd., and have responsibility for the operations of Guinness Communications Inc. d/b/a Delta Cable Vision ("Delta Cable"), its U.S. subsidiary providing cable services in Point Roberts, Washington. I have read the forgoing Request for Waiver, and declare under penalty of perjury that the facts contained therein and in this Declaration are true and correct to the best of my knowledge, information, and belief, and that I am authorized to give this Declaration on behalf of Delta Cable.

2. If granted a waiver from the integration ban for the Motorola DCT-700 set top box, Delta Cable will transition to an all-digital video service on or before February 17, 2009, and that at least six months in advance such transition it will notify all of its analog video customers of its plans to go all digital and will have in inventory or have placed orders for enough set-top boxes to ensure that each of its customers can continue to view Delta Cable's video programming on their television sets.



Larry Boulé
General Manager
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5381 48th Ave.
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Dated: April 26, 2007

Exhibit 1

Specifications for Motorola DCT-700 Set-Top Box



DCT700 All-Digital Set-top

An interactive digital set-top with small size and big performance.

Motorola's DCT700 provides versatile interactivity in the all-digital network for expanded information and entertainment services.

The Motorola DCT700 is an all-digital set-top that provides you with the advantages of an all-digital network. Digital channels take up less room on your cable TV network. This results in increased "bandwidth" for more channels and services like high-definition TV (HDTV), electronic program guides (EPGs), pay-per-view (PPV), Video on Demand (VOD), and other on-demand information and entertainment services. The DCT700's capabilities are limited only by what your cable service provider offers. If your cable service provider eliminated analog channels in your area and replaced them with "all digital" channels, there would be even more room on the cable network system for additional services such as high-speed data, VOD, and high-definition content.

To decode the data used to transmit the digital channels, a separate set-top is required for each television in the home. The DCT700 provides digital channels to all your TVs through coaxial cable or analog (RCA-type) audio/video jacks.

Check with your local cable service provider for availability of the DCT700 in your area.

HIGHLIGHTS

- Supports services such as EPGs, PPV, and VOD
- Reclaims bandwidth allocated to analog channels
- Compatible with Motorola's award-winning secure MediaCipher® conditional access technology
- Two-way capability to enable interactivity
- Motion picture industry standard for coding and decoding video (MPEG-2)
- AC-3 standard for 5.1 Dolby® Digital Surround Sound

CONNECTEDMOTO



MOTOROLA
intelligence everywhere™



DCT700

All-Digital Set-top



Technical Specifications

STANDARD FEATURES

MPEG-2 Digital Video Processor
ATSC standard Dolby® Digital (AC-3) audio processor
ITU standard 64/256 QAM/FEC/enhanced adaptive equalizer
On-board real-time RF return (256 Kbps)
Bitmapped graphics display (4-/8-bit)
90–860 MHz tuner
DES-Based encryption/DCII access control
Digital diagnostics
Frequency agile 2.048 Mbps out-of-band data receiver
Macrovision® copy protection
IR support for remote control

STANDARD INTERFACES

RF remodulator output (ch. 3, 4)
Baseband video and audio outputs

OPTIONAL FEATURES

Motorola Universal Remote Control (DRC450)

**To view our full line of Connected Home Solutions, visit our Web site at
broadband.motorola.com/consumers**

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